

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JUN 19 2008

DAVID J. WILKIND, CLERK
BY
DEPUTY _____

MATT SANTORO

§

V.

§

CASE NO. 4:07cv301

§

UNITED STATES OF AMERICA

§

§

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

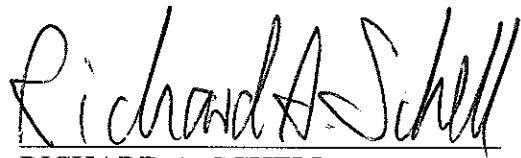
Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On May 16, 2008, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations regarding the United States' Motion to Dismiss and Alternative Motion for Summary Judgment (Dkt. 5), recommending that the motion to dismiss be GRANTED as to any claims seeking damages for wrongful assessments under 26 U.S.C. § 7433, that the motion for summary judgment be GRANTED for Defendant as to those claims arising out of the April 6, 2004 Notice of Federal Tax Lien because they are time-barred, and that the motion to dismiss be GRANTED as to any claims under 26 U.S.C. § 7433 for collection activity accruing after June 2005 and those claims should be DISMISSED without prejudice to re-filing after Plaintiff has exhausted his administrative remedies.

The court has made a *de novo* review of the objections raised by Plaintiff and Defendant's response. The court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court, and

GRANTS the United States' Motion to Dismiss and Alternative Motion for Summary Judgment (Dkt. 5). The motion to dismiss is GRANTED as to any claims seeking damages for wrongful assessments under 26 U.S.C. § 7433, the motion for summary judgment is GRANTED for Defendant as to those claims arising out of the April 6, 2004 Notice of Federal Tax Lien because they are time-barred, and the motion to dismiss is GRANTED as to any claims under 26 U.S.C. § 7433 for collection activity accruing after June 2005 and those claims are DISMISSED without prejudice to re-filing after Plaintiff has exhausted his administrative remedies.

IT IS SO ORDERED.

SIGNED this 18th day of June, 2008.

A handwritten signature in cursive script, reading "Richard A. Schell". The signature is written in dark ink and is positioned above the printed name and title.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE